

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
appropriate methods to
compensate carriers for exchange
of traffic subject to Section
251 of the Telecommunications
Act of 1996.

DOCKET NO. 000075-TP
(Phases II and IIA)
ORDER NO. PSC-02-1248-FOF-TP
ISSUED: September 10, 2002

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this matter:

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I. CASE BACKGROUND

On January 21, 2000, this docket was established to investigate the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996 (the Act). An administrative hearing regarding issues delineated for Phase I of this docket was conducted on March 7 - 8, 2001. In accordance with Order No. PSC-00-2229-PCO-TP, issued November 22, 2000, as modified by Order No. PSC-01-0863-PCO-TP, issued April 5, 2001, post-hearing briefs were filed on April 19, 2001. Thereafter, on April 19, 2001, the Federal Communications Commission (FCC) released its decision in FCC Dockets Nos. 96-98 and 99-68 on matters regarding intercarrier compensation for telecommunications traffic to Internet Service Providers that had been remanded to the FCC for further determination by the Court of Appeals for the District of Columbia Circuit. On April 27, 2001, Order No. PSC-01-1036-PCO-TP was issued requiring all parties in this proceeding to file supplemental post-hearing briefs addressing the decision of the FCC in Dockets Nos. 96-98 and 99-68 (FCC Order) within 10 days of the issuance of the FCC's order memorializing the April 19, 2001, decision. On that same day, the FCC Order was memorialized in Docket Nos. 96-98 and 99-68.

On May 2, 2001, AT&T Communications of the Southern States, Inc., TCG of South Florida, Global NAPS, Inc., MediaOne Florida Telecommunications, Inc., Time Warner Telecom of Florida, LP, Florida Cable Telecommunications Association, Inc., Allegiance Telecom of Florida, Inc. and the Florida Competitive Carriers Association (collectively "Joint Movants") filed a Joint Motion for Extension of Time to File Supplemental Post Hearing Brief. Order No. PSC-01-1094-PCO-TP, issued May 8, 2001, granted the Joint Movants' Motion for Extension of Time.

On March 27, 2002, the parties filed a Joint Stipulation, suggesting we defer action on the issues raised in Phase I of this docket. In support of this proposal, the parties stated that on April 27, 2001, the FCC issued its ruling in the case of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Inter-carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Order on Remand and Report and Order (ISP Remand Order), FCC 01-131. The

parties asserted that the ISP Remand Order established certain nationally applicable rules regarding intercarrier compensation for ISP-bound traffic. Therein, the parties contended that the FCC had asserted jurisdiction over ISP-bound traffic and hence, we should decline to issue a ruling on the issues in Phase I, which addresses reciprocal compensation for ISP-bound traffic. The parties asserted that although the ISP Remand Order is under court review, it had not been stayed and was, therefore, binding.

On May 7, 2002, we issued Order No. PSC-02-0634-AS-TP, approving the Joint Stipulation, but leaving open the docket pending the resolution of issues to be addressed in Phase II of this proceeding. A hearing was conducted on July 5, 2001, concerning the Phase II issues dealing with non-ISP reciprocal compensation matters.

On December 5, 2001, a special agenda conference was held to consider issues designated for resolution in Phase II of this docket (Issues 10-19). At the special agenda conference, we reached decisions on Issues 10, 12, 14, 15, 16, 18, and 19 and deferred decisions on Issues 13 and 17, and set the deferred issues for hearing. Our decisions on Issues 10, 12, 14, 15, 16, 18, and 19 were not memorialized in an order pending final decisions on Issues 13 and 17, for which our staff was directed to schedule a one-day hearing to gather more evidence. A prehearing conference was held April 19, 2002, on the two issues that comprise Phase IIA. At the prehearing, it was determined that testimony previously filed in Phase II of this proceeding would be refiled for informational purposes, and the witnesses sponsoring testimony for Phase II would not be susceptible to cross-examination. A hearing was conducted on May 8, 2002.

This Order addresses the issues identified for Phase II and IIA of this docket.

II. JURISDICTION

The issue to be addressed is whether or not we have jurisdiction to specify rates, terms and conditions governing compensation for transport and delivery or termination of traffic pursuant to the Section 251 of the Act, the FCC's rules and orders, and Florida Statutes. We believe that we have jurisdiction to

establish rates, terms and conditions governing compensation for transport and delivery or termination of traffic pursuant to the FCC's rules and policies, the Act and the Florida Statutes. We also believe that pursuant to Section 120.80(d), Florida Statutes, that in implementing the Act, we have authority to employ procedures consistent with the Act.

There appears to be no significant disagreement among the parties that we have jurisdiction to implement the rates, terms and conditions of intercarrier compensation mechanisms for intrastate traffic subject to Section 251(b)(5) of the Act, so long as such rates, terms and conditions are not inconsistent with the rules and orders of the FCC governing such intercarrier compensation. Verizon states that we have jurisdiction to adopt a reciprocal compensation scheme for local traffic subject to Section 251(b)(5) of the Act, but explains that the FCC has undertaken a rulemaking process to establish a compensation methodology. Verizon contends that the FCC's Remand Order confirms that internet-bound traffic is not subject to reciprocal compensation obligations under Section 251 of the Act. Therefore, Verizon requests that we refrain from making a decision regarding intercarrier compensation.

In its posthearing brief, Sprint asserts that we have authority to specify rates, terms and conditions pursuant to Sections 364.161 and 364.162, Florida Statutes. However, Sprint notes that the ISP Remand Order has a significant impact on our authority in this proceeding, but it fails to provide an analysis of the extent of this impact. Further, the Joint ALECs assert that, unlike the Act, the Florida Statutes do not distinguish between interconnection and transport and termination of traffic and conclude that both are subsumed in the broad term of "Interconnection." However, the Joint ALECs assert that the ISP Remand Order declared that ISP-bound traffic is not "telecommunications" within the meaning of Section 251(b)(5) of the Act and thus not subject to the Act's reciprocal compensation provisions." We note that although the ISP Remand Order does indicate that our jurisdiction has been narrowed in the context of determining rates for ISP-bound traffic, we can specify rates, terms and conditions governing compensation for transport and delivery or termination of traffic consistent with Section 251 of the Act. We believe that pursuant to Sections 364.161 and 364.162,

Florida Statutes, we have authority to establish the rates, terms and conditions of interconnection agreements.

Conclusion

Based on the foregoing, we find that the we have jurisdiction to specify rates, terms and conditions governing compensation for transport and delivery or termination of traffic pursuant to Section 251 of the Act, FCC's rules and orders and Sections 364.161 and 364.162, Florida Statutes, so long as not otherwise inconsistent with the FCC's rules and orders and the Act. Further, we find that Section 120.80(d), Florida Statutes, authorizes us to employ procedures necessary to implement the Act.

111. TANDEM INTERCONNECTION RATE

A. Compensation

The issue to be addressed is whether an ALEC is entitled to be compensated at the ILEC's tandem interconnection rate. We believe this issue has been largely resolved by the FCC's clarification in its recent NPRM. Specifically, the FCC has rendered the ILEC argument of a two-prong test moot by stating that Rule 51.711 requires only geographic comparability. However, we believe that although Rule 51.711 only requires geographic comparability, the FCC clearly stated in ¶1090 of FCC 96-325 that states shall consider the functionality of an ALEC's network when determining if the tandem rate should apply. Paragraph 1090 states in part:

states shall...consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminated on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch.

We believe the language in ¶1090 suggests that there are two scenarios by which an ALEC may be entitled to the tandem rate for reciprocal compensation: similar functionality or geographic comparability. We agree with Sprint witness Maples that there is no linkage between these two scenarios which would require an ALEC

to meet a two-prong test, but rather an either/or application of these two scenarios is appropriate.

While the FCC did mention in its NPRM that the language in ¶1090 regarding "functional equivalency" has caused some confusion, it did not retract this language.¹ The FCC merely clarified that Rule 51.711 requires only geographic comparability. Therefore, we believe that pursuant to ¶1090 of FCC 96-325, similar functionality is still a consideration when determining if an ALEC is entitled to the tandem rate. We agree with Joint ALEC witness Selwyn that it is appropriate to consider the functionality of an ALEC's network in situations where it does not serve a geographic area comparable to that served by an ILEC tandem switch. In this way, an ALEC may qualify for the tandem rate if it actually performs tandem functions, regardless of the geographic area served.

Conclusion

We find that an ALEC is entitled to be compensated at the ILEC's tandem interconnection rate when its switch either serves a comparable geographic area to that served by an ILEC tandem switch, or performs functions similar to those performed by an ILEC tandem switch. We find that Rule 51.711 establishes that an ALEC need only show geographic comparability to be entitled to the tandem rate. However, we also find that ¶1090 of FCC 96-325 establishes similar functionality as a second scenario by which an ALEC may receive the tandem rate. We note that what actually constitutes "similar functionality" and "comparable geographic area" is also addressed in this Order.

B. Similar Functionality

The issue before us is to determine what constitutes "similar functionality" when determining whether an ALEC is entitled to the tandem interconnection rate. This criterion is identified in ¶1090 of the FCC's Local Competition Order (FCC 96-325), which states:

We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated

¹ NPRM at ¶105.

on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber rina or wireless networks) perform functions similar to those uerformed by an incumbent LEC's tandem switch and thus, whether some or all calls-terminating on the new entrant's network should be priced the same as the sum of transdort and terminationvia the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent **LEC's** tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate. (emphasis added)

We believe that similar functionality is one of two possible criteria that would on its own entitle an **ALEC** to receive the tandem interconnection rate for the purposes of reciprocal compensation. The second criterion, comparable geographic area, is also be addressed in this Order. To be determined in this issue is what constitutes functionality similar to that of an ILEC tandem switch, thereby establishing a test for ascertaining whether an ALEC is entitled to the tandem rate under this criterion.

Approaching the issue of symmetrical reciprocal compensation, we recognize that there is an inherent problem in taking a compensation structure designed for a particular network architecture, and applying it to a different architecture. This becomes glaringly evident when attempting to determine what constitutes "similar functionality" for the purposes of applying the ILEC's tandem interconnection rate to an ALEC's network. Nevertheless, we are left with the task of doing just that. While the FCC has delegated to the states the responsibility of considering whether new technologies deployed in ALEC networks perform functions similar to those performed by an **ILEC** tandem switch, the FCC has provided no guidance as to what constitutes similar functionality. However, we note that the FCC did not require that the states make a finding in one direction or another,

but merely that states "shall also consider" whether new technologies perform similar functions. (FCC 96-325, ¶1090) It appears to be at our discretion to decide whether new technologies deployed by ALECs perform functions similar to those of an ILEC tandem switch, or whether they do not.

In determining whether an ALEC is entitled to the tandem rate under the similar functionality criterion, we are presented with two compelling arguments. One option presented by ALEC witnesses is an interpretation of similar functionality in terms of aggregating traffic from remote locations. WorldCom witness Argenbright contends that ALEC networks collect traffic from across many exchanges in various rate centers allowing the efficient switching and transporting of traffic originating and terminating among these exchanges and rate centers. ALECs also argue that functions performed by ALEC switches such as measuring and recording traffic detail, and aggregating calls to operator services platforms should entitle them to the tandem rate.

The second option presented by ILECs is a strict interpretation of similar functionality based upon the definition of tandem switching capability found in FCC Rule 51.319(c) (3). Under this interpretation, an ALEC switch would be required to provide trunk-to-trunk connectivity at an intermediate switch between two end offices. Although not citing Rule 51.319 specifically, Sprint witness Maples also contends that an ALEC switch must provide trunk-to-trunk switching to be entitled to the tandem rate.

The ALECs counter this argument by stating that the definition in Rule 51.319(c) (3) is intended to define the functionality that ILECs must provide as an unbundled network element (UNE). They contend that since ILEC tandems perform trunk-to-trunk switching, the tandem switching UNE must offer the same capability. However, they argue that the definition of tandem switching for unbundling purposes, in terms of the functions performed by the ILEC's network configuration, does not control what constitutes "similar functionality" in an ALEC's network that has a different technical configuration. We disagree. We believe that when determining similar functionality, the benchmark by which an ALEC's network functionality is to be measured is the ILEC tandem switching function. If FCC Rule 51.319(c) (3) defines the functionality of an

ILEC tandem switch, we believe it would stand to reason that this definition of tandem functionality would be controlling, regardless of the fact that it is pertaining to the tandem switching network element.

we do not believe that traffic aggregation by an ALEC network end office switch is similar to the tandem function of an ILEC tandem switch. In looking at an ILEC network, there are several points of traffic aggregation. Traffic is aggregated at remote terminals for transport to an end office. Traffic is aggregated at ~~end offices for transport to a tandem switch.~~ Traffic is aggregated at tandem switches for transport to other end offices. However, we believe an important distinction can be made between the traffic aggregation performed by an end office switch and that performed by a tandem switch. End offices aggregate traffic from end users, and deliver that traffic to either other end users or to a tandem switch. On the other hand, a tandem switch aggregates traffic from end offices for delivery to other end offices. Joint ALEC witness Selwyn explains that in the ALEC network configuration, the transport function is carried out on the "line side" of the switch. In other words, the traffic is aggregated and transported to end users. We believe the switches deployed in an ALEC network perform functions similar to an ILEC end office switch, not a tandem switch. Therefore, we believe that the "new technologies" addressed in this proceeding do not perform functions similar to an ILEC tandem switch unless found to provide trunk-to-trunk connectivity.

We believe the definition of similar functionality to be applied when determining if an ALEC is entitled to the tandem rate should be trunk-to-trunk switching pursuant to FCC Rule 51.319(c)(3). We recognize the argument presented by WorldCom witness Argenbright when he states:

a focus on technical definitions at the expense of the results places ALECs in the position of having to replicate the ILEC's tandem/end office network in order to "qualify" for tandem level compensation. Such an incentive toward the construction of inefficient networks is clearly not in the public interest.

However, we believe that an ALEC's incentive to construct a particular network should not be the receipt of reciprocal compensation at a particular rate; rather, ALECs should construct networks that will enable them to efficiently serve end users. In addition, we believe that the FCC established the "geographic comparability" criterion to enable an ALEC to receive the tandem rate when it doesn't actually perform tandem switching. We would also note that the FCC provided for asymmetrical compensation based upon the ALEC's **own** costs, if an ALEC can show that the costs it incurs in terminating traffic are greater than that provided for in the ILEC's tandem rate (FCC 96-325, ¶1089 and ¶1091).

Conclusion

We find that "similar functionality" shall be defined as trunk-to-trunk switching when determining if an ALEC is entitled to the tandem interconnection rate pursuant to FCC 96-325, ¶1090. We find that the FCC has clearly defined the tandem switching function in Rule 51.319(c) (3) as the basic switch function of connecting trunks to trunks. Although the FCC also described the functions of call recording, routing calls to operator services, and signaling conversion features in Rule 51.319(c) (3), these functions alone will not qualify a switch as performing functions similar to an ILEC tandem switch.

C. Comparable Geographic Area

The issue before the us is to determine what constitutes a "comparable geographic area" when determining whether an ALEC is entitled to the tandem interconnection rate pursuant to 47 C.F.R. 51.711 (Rule 51.711). This rule states in part:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate. (Rule 51.711 (a) (3))

Serving a comparable geographic area is one of two possible criteria that will on its **own** entitle an ALEC to receive the tandem interconnection rate for the purposes of reciprocal compensation.

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The second criterion, similar functionality, has already been addressed in this Order. However, in this issue we are to determine what qualifies an ALEC's network as serving a comparable geographic area to that served by an ILEC tandem switch. We are presented with several options in the record.

When addressing the issue of defining "comparable geographic area" for the purposes of applying the ILEC's tandem interconnection rate to an ALEC's network, we believe there are several sticking points that must be addressed before any ~~definition can be established. The first is the interpretation of~~ the word "serves" contained in FCC Rule 51.711(a)(3). This rule states:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate. (emphasis added)

The debate revolves around whether this word means that an ALEC is actually providing service to a particular number of geographically dispersed customers in that area, or simply capable of providing service to customers throughout the area.

BellSouth witness Ruscilli states that to demonstrate that its switch serves a comparable geographic area to an ILEC tandem, an ALEC must show that it has customers in each of the wire centers served by that ILEC tandem. In addition, he asserts that these customers must be evenly dispersed throughout that area as well. Witness Ruscilli argues that Rule 51.711 states that an ALEC must "demonstrate that it serves, which means to me not capable of serving, but is serving." BellSouth contends that the "[a]doption of a 'capable of serving' standard would render the FCC Rule meaningless, in that every switch is capable of serving virtually any point within the continental United States."

In support of its "actually serves" standard, BellSouth cites to our decision in the Intermedia/BellSouth arbitration.² In that order, we found that the maps submitted by Intermedia were insufficient to reasonably determine if Intermedia was actually serving the areas they had designated as local calling areas. (Order at p.14) We note that this decision was based upon the record in that proceeding. While we used the term "actually serving" in our order, we were not attempting to establish a standard by which companies must demonstrate a particular level of customer service within a geographic area. Rather, we were expressing the fact that a lack of evidence precluded us from determining if Intermedia was providing *any* service to those areas.

Witness Ruscilli acknowledges that a test that looks at the number of customers served, and their general dispersion throughout a particular area, is very subjective. He also concedes that BellSouth has proposed no test to determine a certain numerical threshold of customers that must be served to be entitled to the tandem rate. Verizon witness Beauvais agrees that an ALEC must be serving customers in a particular area, and that they should show some degree of geographic dispersion. However, he too concedes that he does not know how many customers an ALEC must serve to be entitled to the tandem rate.

WorldCom witness Argenbright argues that "a look at number of customers really is a test of marketing success and market penetration." In addition, he contends that the number of customers is not particularly directive as to whether or not an ALEC has investment and a network in place. Sprint witness Maples agrees. He too argues that looking at customer dispersion is basically evaluating success at marketing. He contends that "when you say actually serve, we believe that they are actually seeking customers through advertising or whatever for those geographic areas." Witness Maples explains:

I think by advertising - the fact that they are advertising in that area also assumes that they have perhaps incurred costs, they could have collocated, they

² Petition of BellSouth Telecommunications, Inc. for Section 252(b) Arbitration of Interconnection Agreement with Intermedia Communications, Inc., Docket No. 991854-TP, Order No. PSC-00-1519-FOF-TP, dated August 22, 2000.

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could have done - made whatever arrangements necessary to serve that area. So if they have incurred the costs, why not be able to recover it.

Witness Maples also emphasizes the subjective nature of basing geographic comparability upon customer information. He explains that we would be looking at marketing efforts and making a judgement based upon how successful an **ALEC** has been. He states that "today they have got 100 customers, tomorrow they have got 110. Today they are dispersed this way, tomorrow they disperse, you know, some other way." He argues that the problem with establishing very detailed specifics regarding customer information, is that they are going to change from day-to-day and week-to-week.

We believe this argument is very compelling. While basing a decision upon the quantity and dispersion of an **ALEC's** customers may seem at first glance to be a logical approach, we believe this customer information would be subject to flux in a competitive market. One week an **ALEC** may qualify, the next week it may not. We agree with **ALEC** witnesses that this approach would be more akin to basing the decision of whether an **ALEC** is entitled to the tandem rate on the **ALEC's** marketing success. We do not believe that this approach finds support in **FCC Rule 51.711**, which bases the determination upon whether an **ALEC** serves a comparable geographic area, not a comparable customer base within this area.

We also believe that establishing a geographic comparability threshold based upon the number and location of customers served would be administratively burdensome. With the churn that would presumably occur in a competitive market, an **ALEC** would be forced to track the location and quantity of customers served on a monthly basis to establish that it is entitled to bill the tandem rate. We agree with Sprint witness Maples that this would create an "administrative nightmare." We also emphasize the difficulty inherent in trying to establish a numeric benchmark. As **ILEC** witnesses concede, this is a very subjective approach in which they themselves could give no guidance. Therefore, we do not believe a determination of geographic comparability should be based upon **ALEC** customer information.

Without basing a decision upon customer information, what then does it mean for an ALEC to serve a comparable geographic area? We believe that the appropriate application of the term "serves" found in Rule 51.711 is that an ALEC should be found to serve a geographic area if it has prepared and offered a product throughout that area. Absent any direction from the FCC regarding what they meant by the word "serves" as contained in FCC Rule 51.711, we believe this more liberal interpretation is appropriate.

To loosely illustrate this application of the term "serves," we use ~~the example of a landscaping business.~~ A particular landscaping company could advertise that it serves Tallahassee and the surrounding area. Of course, this company may not have customers within every neighborhood of this area, but it is capable and prepared to serve anyone within each of these neighborhoods. In other words, this company has invested in the equipment necessary to serve any prospective customer within each of these neighborhoods. The number and location of customers that actually subscribe to this company's service will vary depending upon marketing success, but that does not change the fact that Tallahassee is the area it serves.

The next point for consideration is how an ALEC is to demonstrate that it serves a particular area without showing customer information. What information would be needed to verify that an ALEC is in fact capable and prepared to serve a comparable geographic area to that of an ILEC tandem switch? Sprint witness Maples suggests that ALECs be permitted to self-certify that they serve a comparable geographic area. However, we believe that this approach opens the door for further proceedings before us to determine the validity of each ALEC self-certification. **As** witness Maples acknowledged during cross examination, ILECs could object to every self-certification and bring those objections before us for a decision. Since this proceeding is intended to eliminate the need for us to repeatedly arbitrate this issue, we believe Sprint's self-certification approach would not be appropriate.

In their joint brief, certain ALECs have supported the method proposed by WorldCom witness Argenbright. Witness Argenbright suggests:

An ALEC can make this demonstration by comparing the rate centers associated with the **NPA/NXXs** that the ALEC has opened in its switch for the origination and termination of local traffic to the tandem and end office combinations that the ILEC utilizes in serving those same rate centers.

Witness Argenbright explains that prior to obtaining NPA/NXXs for the purposes of opening a particular rate center, an ALEC must prepare its network to serve customers located in that particular rate center. ~~He contends that since the network investment is~~ carried out in advance of acquiring customers, a comparison based upon the NPA/NXXs obtained for the purpose of assigning numbers to customers should be sufficient to show that an ALEC has developed its network to serve the area in question.

While we acknowledge the logic in this argument, we believe a more liberal application of the term "serves" should be accompanied with a more detailed demonstration of network ability. While we believe it is appropriate for an ALEC to provide a list of the NPA/NXXs that an ALEC has opened to show that it is prepared to serve customers in specific rate centers, we also believe an ALEC should be required to make a showing of its actual capability to serve those customers.

We believe the first step is the provision of switching. Rule 51.711 provides that an ALEC is entitled to the tandem rate when its "switch" serves a comparable area to that of an ILEC tandem. Therefore, the first requirement is that an ALEC must deploy a switch and be performing a switching function. While Sprint witness Maples acknowledges that to seek reciprocal compensation an ALEC must deploy a switch, he also requests that UNE-P be included in the criteria established for demonstrating geographic comparability. We disagree. The UNE-P is a combination of UNEs (loop/port combination), in which the ALEC would utilize the ILEC's local switching as an unbundled network element. Since an ALEC would not be performing a switching function when providing service via UNE-P, we do not believe that the use of UNE-P should serve as a qualification for serving a comparable area pursuant to Rule 51.711.

We believe that the context of FCC Rule 51.711, and its supporting discussion in §1090 of FCC 96-325, is the function of an **ALEC's** network. Therefore, we believe an **ALEC** must show that it is serving the area through its own facilities, or a combination of its own facilities and **UNEs** leased from the **ILEC**. WorldCom witness Argenbright explained that one method of expanding geographic service areas is through the establishment of collocation arrangements within **ILEC** wire centers and the provision of transport facilities between the collocation arrangement and the **ALEC** switch. We believe this is a reasonable method of serving a geographic area pursuant to Rule 51.711. Witness Argenbright also describes the use of enhanced extended links (**EELs**) to reach geographic areas where an **ALEC's** network does not currently reach. Since the **ALEC** would still be providing its own switching under this approach, we believe this too is a reasonable method of serving a comparable geographic area pursuant to Rule 51.711.

While we believe the above-mentioned methods of serving a comparable geographic area should qualify an **ALEC** for the tandem rate, we do not want to limit an **ALEC's** ability to qualify for the tandem rate by serving a particular area through some other combination of its own switch/facilities and facilities leased from an **ILEC**. We merely hold these out as present examples of methods utilized to serve a comparable geographic area that would qualify an **ALEC** for the tandem rate pursuant to FCC Rule 51.711.

Finally, the issue of what actually constitutes a comparable geographic area must be established. BellSouth witness Ruscilli maintains that an **ALEC** must be serving customers in each of the exchanges served by its tandem switch. He contends that an **ALEC** must be serving the "same" geographic area as BellSouth's tandems. However, it appears that no other parties to this proceeding hold to such a strict interpretation. Verizon witness Beauvais states that the area served by the **ALEC's** switch should be "about the same physical area as that served by the **ILEC's** tandem switch." **AT&T** in its brief states that an **ALEC** "need only show that its switch is capable of serving an area comparable to the area served by the **ILEC's** switch, not that it is currently serving customers in an identical geographic area." (emphasis in original) Sprint witness Maples contends that comparable does not mean identical, but rather similar. Joint **ALEC** witness Selwyn agrees, stating that there is no requirement that an **ALEC** switch serve an identical area. He

argues that the ALEC switch should serve an area "essentially the same size" as that served by the ILEC tandem. We agree. We do not believe FCC Rule 51.711 requires an ALEC switch to serve "the same" area as that of an ILEC tandem switch, but rather a "comparable" area. We believe a geographic area comparable to that served by an ILEC tandem would be an area roughly the same size in comparison, but not necessarily identical.

Conclusion

We find that a "comparable geographic area," pursuant to FCC Rule 51.711, is a geographic area that is roughly the same size as that served by an ILEC tandem switch. We find that an ALEC "serves" a comparable geographic area when it has deployed a switch to serve this area, and has obtained NPA/NXXs to serve the exchanges within this area. In addition, we find that the ALEC must show that it is serving this area either through its own facilities, or a combination of its own facilities and leased facilities connected to its collocation arrangements in ILEC central offices.

IV. RESPONSIBILITIES OF CARRIERS AND COMPENSATION FOR TRANSPORT

The issue to be addressed is what are the responsibilities of an originating local carrier to transport its traffic to another local carrier and what should be the corresponding compensation. Before we address this issue we must consider what the point of interconnection designation will be.

A. Point of Interconnection Designation

The ILECs present three separate views on how POIs should be designated, only one of which we believe can be substantiated by the record of the proceeding.

BellSouth witness Ruscilli proposes shared decision making between an ILEC and an ALEC in determining where in a LATA parties will interconnect. If agreement is not possible, witness Ruscilli advocates the parties should be free to choose separate POIs. Further, witness Ruscilli argues, a difference exists between POIs and interconnection points, with the former existing for the physical joining of networks and the latter for determining

compensation. In its brief, Sprint describes witness Ruscilli's attempt to distinguish between a POI and an interconnection point as "a weak argument" that lacks support from FCC rules or orders. While we would have chosen a different adjective to describe witness Ruscilli's efforts to separate a POI from an interconnection point, we agree the argument suffers from a lack of corroborative citations. Similarly, witness Ruscilli offers nothing to support his position that an ILEC has a right to designate POIs in a LATA for the purpose of interconnection. Lacking a foundation in the Act, FCC orders, rules or decisions, we cannot adopt witness Ruscilli's proposals.

BellSouth's brief is unclear to us on this issue. In its brief, filed August 10, 2001, BellSouth states, "As noted, two FCC rules bear on this position. The first is 47 C.F.R. §51.702(b)..." We note that there is no 551.702(b) in the FCC rules. Based on the language of the rule cited in BellSouth's brief, we believe the reference is to Rule 51.703(b), which the brief quotes as follows, "a LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on a LEC's network." We are puzzled as to why BellSouth failed to note in its brief changes to 47 C.F.R. 51.703(b), which Commission staff counsel raised during cross examination of BellSouth witness Ruscilli during the hearing on July 5, 2001. The effect of the FCC's change is to eliminate the word "local" when it appears in the phrase "local telecommunications traffic." During the July 5, 2001, hearing, BellSouth witness Ruscilli said he had no opinion on the FCC changes and had not read them prior to the hearing.

Verizon witness Beauvais asserts that the designation of POIs between an ALEC and an ILEC in an interconnection agreement should be determined through negotiations. We agree with witness Beauvais that negotiation is preferable to confrontation in a regulatory climate. However, this issue exists in the context of a generic proceeding because we have been asked repeatedly to reconcile the interconnection differences between parties during a series of arbitrations (Docket Nos. 000649, WorldCom/BellSouth; 000731 AT&T/BellSouth; 000907 Level 3/BellSouth; 000828 Sprint/BellSouth). Additionally, as is the case with witness Ruscilli's argument, witness Beauvais offers no provision of the Act or any FCC order or rule that gives an ILEC the authority to designate a POI in a LATA.

In its brief, Sprint states "The ALEC has the right to designate the location of the POI for both the receipt and delivery of local traffic with the ILEC at any technically feasible location within the ILEC's network." Sprint maintains its position is consistent with FCC Order No. 96-325, ¶553, which witness Hunsucker testifies, creates an obligation for some build-out as a reasonable accommodation for interconnection.

Joint ALEC witness Selwyn contends the Act is deliberately asymmetrical on the issue of interconnection, creating obligations ~~for ILECs that do not exist for ALECs in order to spur competition.~~ Further, witness Selwyn argues, FCC rules prohibit the imposition of interconnection obligations by state commissions on ALECs, and the FCC has made clear that nothing in the Act can be construed to require a new entrant to interconnect at multiple locations in a LATA.

Level 3 witness Gates cites FCC Order No. 96-325, ¶172, to support his testimony that ALECs can select technically feasible POIs to lower their transport and termination costs, and the FCC's order No. 00-238, ¶78, that affirms an ALEC need only designate one POI per LATA.

AT&T witness Follensbee contends the FCC Order granting Southwestern Bell interLATA authority in **Kansas** and Oklahoma makes clear that the ILEC must abide by single, technically feasible, interconnection points, chosen by the ALEC.

B. Originating Carrier Obligations

There appears to be little dispute among the parties that the Act imposes on all carriers the obligation of interconnecting to facilitate the flow of telecommunications traffic. It also appears that the parties do not dispute the obligation of an originating carrier to deliver its traffic to the network of a terminating co-carrier. The disputes emerge when the dialogue turns to where the exchange of traffic will take place, which has been addressed in the POI designation section of this Order, the distance the traffic will have to travel, which is addressed later in this Order, and what compensation -- if any -- applies, which is dealt with later in this recommendation.

C. Compensation Responsibilities

We observe that the disputes among the parties on the issue of compensation in this docket parallel issues on which the FCC is seeking comment on the development of a unified intercarrier compensation regime (Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 01-132). Specifically, ¶113 of the Notice reads as follows:

If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area? Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and/or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area? Further, if we should determine that a carrier establishing a single POI outside a local calling area must bear some portion of the ILEC's transport costs, do our regulations permit the imposition of access charges for calls that originate and terminate within one local calling area but cross local calling area boundaries due to the placement of the POI?

While the ultimate outcome of the FCC's proceedings may result in a seismic restructuring of intercarrier compensation rules, we believe such a conclusion may not be reached for a number of years.

We are persuaded by the record that an originating local exchange carrier is financially responsible for bringing its traffic to the POI in a LATA. AT&T witness Follensbee points out that Section 252(d)(2)(A) establishes a "just and reasonable" standard for compensation that requires "mutual and reciprocal recovery" by each carrier for costs associated with transport and termination. We cannot reconcile the compensation proposals advocated by BellSouth witness Ruscilli, Sprint witness Maples and Verizon witness Beauvais with the Act's requirement for "mutual and reciprocal recovery." If the ILEC proposals are adopted, a terminating carrier would be responsible for paying a portion of the transport costs of an originating carrier's traffic. We believe such a system would provide for asymmetrical recovery and,

in addition, would appear to be contrary to 47 C.F.R. 51.703(b), which prohibits a LEC from assessing charges on any other carrier for traffic originating on the LEC's network. Witness Ruscilli contends FCC Order No. 96-325, ¶199, which discusses technically feasible but expensive interconnections, justifies the compensation scheme he proposes. He acknowledges, however, that the same FCC order limits consideration of technical feasibility to operational or technical concerns and excludes the use of economic factors. Neither witness Beauvais nor witness Maples provide any additional cites to support their positions.

Witness Ruscilli also alludes to the portion of FCC Order No. 96-325, ¶209, that reads, "Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect." From this language, witness Ruscilli concludes the FCC expects an ALEC to pay the additional costs it causes ILECs to incur.

ALEC witness Selwyn contends the additional costs referred to by witness Ruscilli are "immeasurably small" and may be covered by the tandem reciprocal compensation rate.

Portions of the TSR Wireless Order cited by Level 3 witness Gates appear to substantiate AT&T witness Follensbee's position: The order places the financial burden of the cost of the facilities used to deliver traffic to a co-carrier on the originating carrier.

BellSouth witness Ruscilli's efforts to refute the application of the TSR Wireless Order in this proceeding appear to be contingent on his belief that the order must be read in context with 47 C.F.R. 51.701(b)(2) and 51.703(b). Witness Ruscilli testifies the effect of this interpretation is to require an ILEC to deliver its originated traffic without charge to the network of a co-carrier only if the POI is within the local calling area in which the call originates. As noted earlier in connection with POI issues in this Order, the definition in Rule 51.703(b) on which witness Ruscilli relies in his testimony and on which BellSouth relies in its brief was changed by the FCC in Order No. 01-131. Asked during the hearing if he had an opinion on what the FCC intended by these changes, witness Ruscilli responded, "No I don't."

This is the first time I have looked at this." As we noted earlier, BellSouth's brief does not reflect the FCC's change.

Conclusion

Point of Interconnection Designation

Neither BellSouth witness Ruscilli nor Verizon witness Beauvais provide any basis supporting the right of an ILEC to have authority in designating POIs. We specifically reject BellSouth witness Ruscilli's argument that a point of interconnection and an interconnection point are separate entities because the distinction lacks any discernable authority. Conversely, Sprint witness Hunsucker and ALEC witnesses Selwyn, Gates and Follensbee, offer specific citations to the Act, FCC orders and rules in support of their position. We find persuasive the extensive authority cited by Sprint witness Hunsucker and the ALEC witnesses, and therefore, we find that ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications traffic at any technically feasible location on an incumbent's network within a LATA. Nothing in this Order should be construed as an infringement on an ALEC's ability to negotiate this prerogative in exchange for other considerations.

Originating Carrier Obligations

The parties do not dispute their respective obligations under Section 251(a)(1) or Section 251(c)(2)(A) of the Act. Therefore, we find that an originating carrier has the responsibility for delivering its traffic to the point(s) of interconnection designated by the alternative local exchange company (ALEC) in each LATA for the mutual exchange of traffic.

Compensation Responsibilities

We find nothing in the record to support the imposition by us of the intercarrier compensation scheme advocated by the ILEC witnesses. We believe the concerns expressed by the ALEC witnesses are valid and that the mandated sharing of originating carrier transport costs proposed by the ILEC witnesses potentially conflicts with the requirements of Section 252(d)(2)(A) of the Act. Additionally, ALEC witnesses cite recent interpretations of the

FCC's rules at paragraph 34 of the TSR Wireless Order, and in FCC Order No. 01-132, ¶112, that appear to prohibit an originating carrier from imposing any originating costs on a co-carrier.

The undisputed testimony in the record is that the transport costs identified as being at issue in this proceeding are **de minimus**. Whether or not these costs are covered by an ILEC's local calling rates or tandem switching rates paid by ALECs is debatable, but not reconcilable by the record evidence.

Based on the foregoing, we find that an originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the originating carrier's traffic, from its source to the point(s) of interconnection in a LATA. These rules require an originating carrier to compensate the terminating carrier for transport and termination of traffic through intercarrier compensation.

V. CONDITIONS FOR ASSIGNMENT OF NUMBERS AND COMPENSATION

In this issue we are presented with two matters for determination. First, we are to determine under what conditions carriers may assign telephone numbers to end users physically located outside the rate center in which the telephone number is homed. Second, we are to determine whether intercarrier compensation for calls to these numbers should be based upon the physical location of the calling and called parties or upon a comparison of the NPA/NXXs assigned to them. We note that due to the FCC's recent *ISP Remand Order*,³ which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers. Sprint witness Maples explains that when you take ISP-bound traffic out of the equation, any real voice FX traffic is going to be minor. Nevertheless, no party to this proceeding has suggested that our decision on this issue is no longer needed. We merely note that the volume of traffic that will be subject to the our decision on this issue has potentially decreased considerably since this docket was originally opened.

³ Inter-carrier compensation for ISP-Bound Traffic. Order on Remand and Report and Order, CC Docket Nos. 96-98 and 99-68: FCC 01-131 released April 27, 2001.